

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-231-26-2031 LICENSE NO. 02881
Issued to: William E. Armstrong

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2025

William E. Armstrong

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulation 137.30-1, now 5.30-1.

By order dated 12 September 1974, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, suspended Appellant's seaman documents for one month on three months' probation and revoked his operator's license outright upon finding him guilty of misconduct. The specifications found proved alleges that, on or about 11 1973, Appellant wrongfully, knowingly, and fraudulently submitted and signed a false application for an original towboat operator's license at the USCG Marine Safety Office, Norfolk, Virginia, to wit: Appellant indicated on said application that he never had been convicted by any court including a military court, for any offense other than a minor traffic violation when in fact he had a past history of several major criminal convictions before different state courts.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a Motorboat Operator's License application submitted by the Appellant in 1963, a letter from the Commandant, U.S. Coast Guard, dated the same year in which the application was disapproved for reason of "unsatisfactory habits of life and character", a License and Renewal Application submitted by the Appellant in 1973, and certified copies of state court conviction orders of the Appellant for various criminal offenses in Virginia, Delaware and Louisiana.

In defense, Appellant offered in evidence his own testimony. At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on the Appellant revoking his operator's license outright and suspending his merchant mariner's document for a period of one month on three months' probation.

The entire decision and order was served on 16 September 1974. Appeal was timely filed on 15 November 1974.

FINDINGS OF FACT

On 11 June 1973, the Appellant made application for the issuance of an original license for operation of an uninspected towing vessel upon ocean waters not to exceed 200 miles offshore and upon inland waters. As part of this application process, the Appellant completed Coast Guard Form 866 (Rev 3-67) and submitted the same to the U. S. Coast Marine Safety Office, Norfolk, Virginia. Blocks 19 and 21 of that form request the applicant to answer whether or not he has any past history of court convictions other than minor traffic violations and, if so, to elaborate as to the nature of them. In answering these questions the Appellant indicated he had no such criminal record. In fact, he was convicted of first degree murder in Virginia in 1948, was convicted of driving under the influence of alcohol in Delaware in 1965 and again in 1966, was convicted of reckless operation of a vehicle in Louisiana in 1972, was convicted of operating a vehicle while intoxicated in Louisiana in 1972, and was convicted of Public bribery in Louisiana in 1972. The Appellant's response to the aforementioned question was wrongful, fraudulent, and knowingly false. Based upon this answer and the other information provided in the application, on 10 July 1973 the Coast Guard issued the requested license to the Appellant.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) the Coast Guard was without jurisdiction to proceed with an administrative proceedings under RS 4450 because Appellant's actions in making the application were not "under authority of a license or document"; and
- (2) the Coast Guard failed to satisfy its burden of showing that the Appellant acted fraudulently in executing the license application.

APPEARANCE: Morton H. Clark, Esq., Vandeventer, Black
Meredith, and Martin, Norfolk, Va.

OPINION

Since the resolution of the first issue is dispositive in this case, it is not necessary to address the second point of appeal.

Appellant's jurisdictional argument is essentially one of substantive error in the factual findings of the Administrative Law Judge. Specifically, he asserts that at the time of the alleged misconduct he was not, in fact, acting under authority of either his mariner's document or his operator's license and that without proof of such the Coast Guard has no jurisdictional basis to proceed with the hearing. A related question, although one not specifically raised by the Appellant, concerns whether the charges and specifications served upon the Appellant, made any assertion of the jurisdiction upon which the action was predicated. Jurisdiction being crucial to the validity of any proceeding, all facets of this issue will be considered, irregardless of whether specifically excepted to by Appellant or not. Therefore, in accordance with 46 CFR 5.30-1 (f)(3), both matters are discussed below.

The jurisdiction of administrative bodies is dependent entirely upon the validity and the terms of the statutes reposing power in them. Where an Administrative forum acts without jurisdiction its orders are void. In administrative proceedings under RS 4450 the statutory basis is found in 46 USC 239. This statute provides for the investigation of certain occurrences, among which is any misconduct by an officer or seaman while acting under authority of a license or document issued by the Coast Guard. 46 CFR 5.01-30(a)(1), promulgated pursuant to this statutory grant of power, provides for the institution of revocation proceedings in cases of misconduct "while acting under authority "of a license, certificate, or document.

In this case the Appellant was charged with misconduct. The amended charge sheet, which was served upon and signed by the Appellant, listed a single charge of misconduct and a single specification of fraudulent application for the aforementioned license. Nowhere on this sheet is there any assertion that the act of misconduct occurred while performing under authority of a document or license. Indeed, the printed words to that effect, which are found on the standardized forms used in 4450 investigations, were intentionally marked out. Without the use of this statutory language the charge sheet is procedurally defective. A charge of misconduct is not enough, by itself, to invoke jurisdiction under RS 4450. The statute giving rise to these proceedings prescribes that the misconduct must occur "while acting under authority...". Jurisdiction must be affirmatively shown and will not be presumed. If the Investigating Officer did not assert proper jurisdiction in the charge sheet itself, thereby apprising the Appellant of the basis of the proceedings, then there is in fact no jurisdiction, absent a cure of this procedural error at the hearing itself. If a factual finding supportive of the requisite jurisdiction is found in the record itself, then the charge sheet

may be amended, even at this level of the proceedings. However, a review of the record in this case reveals no such opportunity for cure of the defect. No evidence was introduced at the hearing which tended to prove that at the time of the application the Appellant was acting under authority of a license, certificate, or document. Neither does the factual finding made by the Administrative Law Judge make any mention of this essential element.

46 CFR 5.20-65 charges Administrative Law Judges with the duty to examine the charges and specifications for correctness in form and legal sufficiency. This obligation has not been fulfilled here. Without a showing of proper jurisdiction, all prior proceedings in this case are a nullity. This matter could be remanded for the purpose of ascertainment of whether or not a jurisdictional basis, in fact, exists. However, since the Appellant appeals on this very issue, and in the interests of judicial exigency, I will make this factual determination.

I have consistently held in prior matters before me that a person is serving "under authority of a license or document" issued by the Coast Guard if the possession of that license or document is a condition of employment and the character of the employment is that involving the scope of the license or document issued. RS 4450 proceedings are directed solely at documents or licenses, not against persons or property. Accordingly, when such an action is based upon a charge of "misconduct while acting under authority...", the particular act must be related to the particular document or license and to the person's employment thereunder.

In this case, the proceeding is directed against both the Appellant's mariner's document and his uninspected towboat operator's license. Based upon the evidence presented at the hearing below there can be no doubt that the Appellant indeed made a fraudulent application and that this was an act of misconduct. However, his actions were not under authority of either his document or his license. At the time of the application, the Appellant did not possess a license. It was not issued to him (as an original) until some four weeks later. Therefore, it would have been factually impossible for him to have acted under authority of the license before it came into existence. On 11 June 1973, the date of the fraudulent application, the Appellant did hold a previously issued merchant mariner's document. However, the possession of such is not a prerequisite to application for an uninspected towboat operator's license. The application itself is in no way related to the character of his employment (or potential employment) as a merchant seaman. Therefore, he was not acting under authority of the document when he made the false entry on the form.

The factual situation in this case should be distinguished from circumstances under which a person makes a false entry on an application for the renewal of a previously issued license and from the situation where the possession of a certain document or license is a prerequisite for the application itself. Under these conditions the applicant would be acting under authority of a license or document and jurisdiction would exist. But under the circumstances of this case I find that no jurisdiction exists for the initiation of an RS 4450 proceeding. The prior order of the Administrative Law Judge suspending on probation the Appellant's mariner's document and revoking his license is a nullity and all accounts of this should be exculpated from his record. However, in making this decision I find that the Appellant has no possessory interest in the license itself and therefore it need not be returned to him. The issuance of this license by the U.S. Coast Guard was predicated upon the correctness of the information presented in the application. Information concerning the criminal background of an applicant for an operator's license is a crucial factor in the determination of whether or not to issue such license, since it bears directly on the reliability and responsibility requisite for holders of such a position. Had the Appellant divulged his criminal record then the Coast Guard, in the interest of protection of life and property at sea, might have rejected his application. Since the decision to issue the license was based upon false information, the license itself was void ab initio. The Appellant has no interest in the license since it never was valid, and he cannot now demand its return.

This decision should not upset Coast Guard policy in similar factual situations. The truth of information provided by applicants for documents and licenses is essential to the discharge of the Coast Guard mission of protection of life and property at sea. The fact that jurisdiction may not exist under RS 4450 should not reduce the impact of existing deterrents to the filing of fraudulent applications. Any license issued as the result of reliance upon false information will always be null and void. More important, 18 USC 1001 provides that the intentional making of false or fraudulent statements or representations in any matter within the jurisdiction of any department or agency of the United States is a Federal crime punishable by a \$10,000 fine, or 5 years imprisonment, or both. The contents of 18 USC 1001 are printed on all Coast Guard license application forms. In signing one of these forms an applicant acknowledges his awareness of the meaning of this statute. Accordingly, in those cases where there is evidence of criminal liability of an applicant, it should be transmitted to the local U. S. Attorney for appropriate action.

CONCLUSION

Since the Administrative Law Judge lacked jurisdiction, his order must be reversed. However, Appellant's towboat operator's license need not be returned as it was void ab initio and appellant has no interest in it. On the other hand, the sanction imposed by the Judge against appellant's merchant mariner's document cannot stand.

ORDER

The findings and order of the Asdministrative Law Judge, dated at Norfolk, Virginia on 12 September 1974 are VACATED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 5th day of June 1975.

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